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Letter dated 4 December 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to President of the Security Council

I write with reference to my letter of 3 September 2002 (S/2002/999).

The Counter-Terrorism Committee has received the attached supplementary report from Malaysia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 27 November 2002 from the Permanent Representative of Malaysia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In reply to your letter S/AC.40/2002/MS/OC 143 of 27 August 2002, I have the honour to transmit to you the supplementary report of Malaysia, as requested by the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001) (see enclosure).*

(*Signed*) Hasmy **Agam**
Ambassador/Permanent Representative

* Additional enclosures are on file with the Secretariat and are available for consultation.

Enclosure

Follow-up response of Malaysia to the report submitted to the Counter-Terrorism Committee in pursuance of resolution 1373 (2001)

- **Sub-paragraph 1 (a):**

  - **Do banking secrecy provisions (in particular the Banking and Financial Institutions Act 1989) apply to investigations against alleged terrorists for crimes either already committed or likely to be committed?**

1. Banking secrecy provisions can be looked from two aspects, namely, one under the Banking and Financial Institutions Act 1989 (BAFIA) and secondly, under the Central Bank of Malaysia Act 1958 (CBA).

2. Section 97(i) of the BAFIA provides that no director or officer of any licensed institution, or of any external bureau established, or any agent appointed, by the licensed institution shall give, produce, divulge, reveal, publish or otherwise disclose, to any person, or make a record for any person, of any information or document whatsoever relating to the affairs or account of such customer. However, section 99(1) of the BAFIA allows licensed institutions to disclose such prohibited information if such disclosure, among others, is –

   2.1 required or authorised under any other provision of the BAFIA (section 99(1)(g));

   2.2 authorised under any Federal law to be made to a police officer investigating into any offence under such law and such disclosure to the police officer, being in any case, limited to the accounts and affairs of the person suspected of the offence ((section 99(1)(h)); or

   2.3 authorised in writing by the Bank (section 99(1)(i)).

3. Based on the above provision, if a criminal investigation is carried out by a police officer against an alleged terrorist for crimes already committed or likely to be committed under the Securities Commission Act 1993, Internal Security Act 1960, Kidnapping Act 1961, Dangerous Drugs (Forfeiture of Property) Act 1988 or the Prevention of Corruption Act 1961, section 99(1)(h) of the BAFIA envisages the mandatory disclosure of information to a police officer

since it is pursuant to an order made by the Public Prosecutor requiring such licensed institution to disclose information relating to its customer's affairs or accounts or inspection of the banker's books for the purpose of facilitating the gathering of evidence relating to the commission of an offence under the above legislation. If a criminal investigation is carried out by a police officer against an alleged terrorist under the Penal Code or any written law, such police officer can obtain information about the person from licensed institutions only by obtaining prior written consent from the Bank.

4. BAFIA is administered and enforced by the Central Bank of Malaysia (Central Bank) under section 30(3) of the CBA. In carrying out all the powers under the BAFIA, section 16 of the CBA prohibits directors and officers of the Central Bank from disclosing to any person any information relating to affairs of the Central Bank or of a banking institution or other financial institution which he has acquired in the performance of his duties or the exercise of his functions except if such disclosure is for the purpose of the performance of his duties or the exercise of his functions or when lawfully required to do by any court or under any law. However, section 16A(1) of the CBA authorises the Central Bank to disclose information, among others, to a police officer in charge of a police station or to any other police officer if it suspects that any person has committed any offence, among others, under the CBA, BAFIA or under any written law, or to convey any or all information in relation to such offence to any banking institution, any other financial institution or other person affected by such offence, or to any authority or person having power to investigate or enforce the provision of the law under which the offence is suspected by the Bank to have been committed.

- **Please clarify whether, under section 28B (5) of the Labuan Offshore Financial Services Authority Act 1996, section 21 of the Offshore Banking Act 1990 or any other legal provision, that authority is under a legal obligation to report suspicious activities to the home monetary authority, the home supervisory authority or the domestic law enforcement agency.**

1. Section 20 of the Anti-Money Laundering Act 2001 (AMLA) has overridden secrecy provision imposed by any written law, which is also applicable to offshore legislation in Labuan. Hence LOFSA or the offshore financial institutions in Labuan is required under

the AMLA to report any suspicious transactions to the Competent Authority i.e. Bank Negara Malaysia.

- **Are natural or legal persons other than banks (e.g. attorneys, notaries) required to report to the public authorities suspicious transactions that might be linked to terrorist activities? If so, what penalties apply to persons who omit to report either willfully or by negligence?**

1. At present, the requirement for the reporting of suspicious transactions under the Anti-Money Laundering Act 2001 (AMLA) has not been extended to natural or legal persons. However, the Central Bank plans to include natural or legal persons such as lawyers and accountants as reporting institutions under the First Schedule to the AMLA. The lawyers and accountants would then be compelled to report suspicious transactions under section 14(b) of the AMLA, to the Central Bank if they are included in the First Schedule as reporting institutions. This can be done under section 85 of the AMLA whereby the Minister of Finance (Minister) has the power to amend the First Schedule. Further, section 47 of the AMLA provides that a Judge of the High Court may order an advocate and solicitor to disclose information available to him in respect of any transaction or dealing relating to any property which an investigating officer has reasonable grounds to suspect to be the subject-matter or evidence relating to a money laundering offence. However, the disclosure should not involve privilege information which came to the advocate's knowledge for the purpose of any pending proceedings.

2. If the advocate or solicitor refuses to comply with the High Court order, such person commits an offence and shall on conviction be liable to a fine not exceeding RM250,000. Section 49 further states that the Public Prosecutor has been given the power to request any person whom he has reason to believe is able to assist in the investigation of the money laundering offence, to furnish information so required. If such person willfully fails or refuses to disclose the required information, he commits an offence and shall on conviction be liable to a fine not exceeding RM1 million or to imprisonment for a term not exceeding 1 year or to both and in the case of a continuing offence, to a further fine not exceeding RM1,000 for each day during which the offence continues after conviction.

- **Please explain under which circumstances the penalties provided for by sections 99 and 103 of the Banking and Financial Institutions Act 1989 apply to legal persons ("*bodies corporate*") and to natural persons, respectively.**

1. The penalties provided under section 103 of the BAFIA would apply to legal persons in the circumstance where at the time the offence was committed by any institution, the director, officer or controller of the legal person is unable to prove that the offence involved was committed without his consent or connivance and that he has exercised all such diligence to prevent the commission of the offence as he ought to have exercised. This is provided under section 106. On the other hand, the penalties under section 103 would apply to any natural person when it is proven beyond reasonable doubt that he contravenes any provisions of the BAFIA or any subsidiary legislation under it. It should be noted that section 99 does not provide for any penalties since it merely states the exceptions to the secrecy provision enumerated in section 97 of the BAFIA. Under section 97, the penalties will only apply to the directors and officers of the licensed institution, an external bureau established by the licensed institution or an agent appointed by the licensed institution or any person who breached the confidentiality of the customer's accounts and affairs, but not the licensed institution itself.

- **Please provide the CTC with a progress report on the Anti-Money Laundering Act 2001. Will terrorist acts be included as predicate offences in the Second Schedule to that Act, which specifies the relevant serious offences?**

1. The Anti-Money Laundering Act 2001 (AMLA) was gazetted as law on 5 July 2001 and came into force on 15 January 2002. Since then, it has been invoked on the following reporting institutions:

   1.1 Commercial banks, finance companies, merchant banks and Islamic banks with effect from 15 January 2002;

   1.2 Life and general insurers, reinsurers, takaful operators, discount houses, offshore banks, offshore insurers and offshore trust companies with effect from 15 April 2002; and

1.3 Money-changers with effect from 1 June 2002.

2. By virtue of section 85 of the AMLA, the Minister on 15 January 2002 had amended the Second Schedule (on the definition of 'serious offence') to include sections 125 and 125A of the Penal Code as part of the 122 predicate offences under the AMLA. The amendment was made through the Anti-Money Laundering (Amendment of Second Schedule) Order 2000 [P.U. (A) 18/2002]. Section 125 provides for the offence of waging war against any power in alliance or at peace with His Majesty the King while section 125A provides for the offence of harbouring or attempting to harbour any person in Malaysia or person residing in a State at war or in hostility against His Majesty the King. The term "harbour" is defined in section 130A to include the supply of money to a person, and as such would encompass the financing of terrorism.

- **Please could Malaysia provide information about the definition used in the Anti-Money Laundering Act 2001 or by the Malaysian authorities in order to distinguish "*large and unusual*" transactions from transactions of a "*suspicious nature*".**

1. "Large and unusual" transactions is provided under section 14(a) of the AMLA to mean any transaction exceeding the amount specified by the competent authority involving both domestic currency or any foreign currency. Meanwhile, transactions of "suspicious nature" refers to any transaction where the identity of the persons involved, the transaction itself or any other circumstances concerning that transaction gives any officer or employee of the reporting institution reason to suspect that the transaction involves proceeds of an unlawful activity, as provided for under section 14(b) of the AMLA. At present, the Central Bank, which is the competent authority to implement Part IV of the AMLA, has not invoked threshold reporting on the reporting institutions. To assist the reporting institutions to identify suspicious transactions, the Central Bank has included examples of suspicious transactions in the Guidelines issued to the banking institutions, insurance companies and money-changing entities. The Guidelines are attached in Appendix I.

- **Section 53 of the Societies Act 1966 makes it an offence to misuse the money or property of a registered society and penalizes any such act with a fine not exceeding RM 5000 (page 22 of the report). In view of the large amounts that can be misused in that manner and which can easily exceed RM 5000, does Malaysia envisage reviewing the penalty provided for the violation of section 53?**

1. Malaysia does not envisage the review of the penalty, as it has been quoted out of context. The penalty is applicable to a member or an office bearer who has failed to deliver up by order of the court the money or property that is subject to the misuse, to the trustees of the society and in the event that the said member or office-bearer duly delivers the money or property to the trustees of the society, then the matter stops there. However, this provision does not address directly the issue of a society being used as terrorist organization or involved in terrorist activities either directly or indirectly.

- **Does Malaysia have any provision for regulating informal banking networks (e.g. Hawala)? Please outline such provisions.**

1. In Malaysia, informal banking networks are prohibited by virtue of section 4 of the BAFIA which requires any person who wants to carry on a banking business to apply for a licence from the Central Bank. A person who contravenes this section shall be liable, upon conviction, to imprisonment for a term not exceeding 10 years or to a fine not exceeding RM10 million, or to both. Section 10 of the Exchange Control Act 1953 (ECA) prohibits any person from carrying on the business of remitting money or in kind outside Malaysia except with the permission of the Controller of Foreign Exchange. Under paragraph 7(2) of the Fifth Schedule to the ECA, anyone who contravenes section 10 shall be liable, upon conviction, to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding 3 years, or to both. Section 30(1) of the Money-Changing Act 1998 prohibits licensed money-changers from remitting or transferring funds outside Malaysia. Nevertheless, a licensed money-changer may, on its own behalf, remit or transfer funds outside Malaysia through an authorised dealer. A licensed money-changer who contravenes this section shall be guilty of an offence and upon conviction be liable to a fine not exceeding RM100,000.

- **Sub-paragraphs 1 (b) and (d):**

  - **What measures are there to prevent or punish acts committed by terrorist organizations operating from Malaysia (for example, by fund-raising) for a cause not likely to affect Malaysian interests?**

1. The relevant existing legislative provisions have been listed in the first report to the CTC.

2. Foremost would be section 125 of the Penal Code which makes it an offence to wage war against the Government of any power in alliance or at peace with the King (Head of State) of Malaysia, or to attempt or abet the waging of such war, whether in conjunction with the enemies of the King or otherwise.

   Penalty:

   - Imprisonment for life, to which fine may be added; or

   - Imprisonment for a term which may extend to 20 years, to which fine may be added; or

   - Fine.

3. Malaysia is also proposing to enact specific legislative provisions to-

   3.1 criminalize the willful provision or collection, by any means, directly or indirectly, of funds by Malaysian nationals or in Malaysian territory with the intention that the funds be used, or in the knowledge that they are to be used, to carry out terrorist acts; and

   3.2 prohibit Malaysian nationals or any persons and entities within their territories from making any funds, etc. available to carry out terrorist acts.

This matter is being undertaken by the Ministry of Home Affairs.

- **Does section 59 of the Internal Security Act 1960 criminalize all the offences set forth in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999?**

  1. Section 59 of the Internal Security Act 1960 criminalises the demand, collection and receipt of any supplies within or outside a security area for the use of any terrorist.

- **Since the legal provisions listed in sub-paragraphs 1 (b) and (d) of the report do not seem to fully implement sub-paragraphs 1 (b) and (d) of the Resolution, please explain which additional measures Malaysia intends to take in order to criminalize and prohibit the collection and provision of the funds and other financial assets or economic resources, etc, as required by those sub-paragraphs of the Resolution.**

  1. Malaysia is proposing to enact specific legislative provisions for this purpose. This matter is being undertaken by the Ministry of Home Affairs.

- **Sub-paragraph 1 (c):**

  - **Since the legal provisions listed in sub-paragraph 1 (c) of the report do not seem to implement sub-paragraph 1 (c) of the Resolution in its entirety, please explain which additional measures Malaysia intends to take in order to be able to freeze the funds and other financial assets or economic resources, as required by that sub-paragraph of the Resolution.**

    1. Malaysia is proposing to enact specific legislative provisions for this purpose. This matter is being undertaken by the Ministry of Home Affairs.

    2. The Governor of the Central Bank, as the Controller of the Foreign Exchange, has issued 7 circulars under section 44 of the Exchange Control Act 1953 to all licensed financial institutions and licensed offshore financial institutions to freeze the funds and

financial resources, including funds derived or generated from property owned or controlled, directly or indirectly, by Osama bin Laden, the Al-Qaeda organization or the Taliban and other individuals, groups or entities associated with them as listed in the UN Security Council Resolutions 1267 and 1390.

- **Sub-paragraph 2 (a):**

  - **Is the Registrar empowered under the Societies Act 1966 to cancel the registration of any society which is likely to be used to support terrorist activities directed against foreign interests?**

    1. The Registrar is empowered to cancel any society wherein it is found that the society is likely to be used for unlawful purposes or for purposes prejudicial to or incompatible with peace, welfare, good order or morality in Malaysia (which include terrorist activities) or it is pursuing objects other than the objects with which the society is registered or it has wilfully contravened any provision of the Act or any regulation made thereunder or any of its rules with which it is registered.

  - **Please outline Malaysia's import and export control regime for weapons and explosives to the extent it is relevant to eliminate the supply of weapons to terrorists.**

    1. The following are the relevant legislative provisions relating to the said control regime:

       1.1 Section 15 of the Arms Act 1960 prohibits the importation of arms or ammunition into Malaysia either by air, sea or land without a licence in that behalf.

       1.2 Section 17 requires any person entering Malaysia who has in his possession any arms or ammunition shall make a declaration to the authorities.

       1.3 Section 19 prohibits the exportation of arms or ammunition from Malaysia either by air, sea or land without a licence in that behalf.

- **Is there any provision in Malaysian law to prohibit the acquisition of firearms without a license (especially at the time of purchase)?**

1. The following are the relevant legislative provisions relating to the prohibition of the acquisition of firearms without license:

1.1 Section 3 of the Arms Act 1960 criminalises the possession, custody or control of any arms or ammunition without an arms licence.

1.2 Section 9 of the Arms Act 1960 provides that no person shall sell, transfer, keep and expose for sale any arms or ammunition without a valid licence.

1.3 Section 11 criminalises the sale or transfer of arms or ammunition except to licensed dealer or repairer, holder of a licence or permit or to a police officer.

- **Are there legal provisions prohibiting the brokering of weapons to terrorists and their organizations?**

Section 59 of the Arms Act 1960 is applicable as 'supplies' includes firearms, ammunition and explosives.

- **Sub-paragraph 2 (b):**

- **Please outline the content of section 130 of the Penal Code to the extent it is relevant for the implementation of this sub-paragraph.**

1. With reference to the report submitted to the CTC, it is noted that s130 of the Penal Code was not cited as being relevant for the implementation of this subparagraph.

2. S130 of the Penal Code makes it an offence to knowingly aid or assist any prisoner of State or prisoner of war in escaping from lawful custody, or to rescue or attempt to rescue any such prisoner, or to harbour or conceal any such prisoner who has escaped from lawful custody, or to offer or attempt to offer any resistance to the recapture of such prisoner. As such it has nothing to do with the obligation under subparagraph 2(b) to

prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information.

3. Instead, section 130A of the Penal Code was cited in the report since it defines the term "harbour" as used in section 125A of the Penal Code. The term is defined as follows:

"harbour" includes the supplying a person with shelter, food, drink, money or clothes; or, except by a person employed in a Government hospital, medicine, bandages, surgical dressings or any other form of aid to a person wounded; or arms, ammunition or means of conveyance, or the assisting a person in any way to evade apprehension;".

4. In any case, as explained in the report, Malaysia gives effect to the requirements of this subparagraph through administrative measures.

- **Please provide the CTC with information on the mechanism for inter-agency co-operation between the authorities responsible for narcotics control, financial tracking and security, with particular regard to the border controls preventing the movement of terrorists.**

1. There are various enforcement agencies that safeguard the entry/exit points of the country. In particular, agencies responsible for denying access by terrorists and criminals into the country consist of the Immigration Department, Royal Malaysia Police and the Anti-Smuggling Unit which falls within the purview of the Ministry of Home Affairs.

2. All of these agencies cooperate by extending assistance where needed such as by information exchange, etc.

3. At the Ministerial level, there exists the National Security Council chaired by the Honourable Prime Minister of Malaysia. The National Security Council discusses national security issues that include cooperation among the enforcement agencies.

4. In respect of financial tracking, the mechanism for inter-agency cooperation to control and prevent the movement of terrorists in Malaysia is under the purview of the National Coordination Committee to Counter Money Laundering (NCC). The NCC consists of the Central Bank as the lead agency and the following 12 government agencies:

4.1 Anti-Corruption Agency;

4.2 Attorney-General's Chambers;

4.3 Companies Commission of Malaysia;

4.4 Inland Revenue Board;

4.5 Labuan Offshore Financial Services Authority;

4.6 Ministry of Finance;

4.7 Ministry of Foreign Affairs;

4.8 Ministry of Home Affairs;

4.9 National Drugs Agency;

4.10 Royal Malaysian Customs;

4.11 Royal Malaysian Police; and

4.12 Securities Commission.

5. The NCC has adopted a set of Terms of Reference to guide its activities. The NCC's objectives are as follows-

5.1 Develop national policy on measures to counter money laundering;

5.2 Coordinate national policies with regional and international initiatives;

5.3 Agree on an action plan to counter money laundering in Malaysia;

5.4 Ensure Malaysia complies with its APG membership requirements and paragraph 15 of the UN Political Declaration and Action Plan Against Money Laundering to have anti-money laundering legislation in place by year 2003;

5.5 Develop and ensure proper implementation of measures to counter money laundering based on internationally accepted standards, i.e. the 40 Recommendations of the Financial Action Task Force on Money Laundering (FATF);

5.6 Identify and remedy any overlap or discrepancy between the existing and proposed measures to counter money laundering;

5.7 Monitor the effectiveness of measures that have been implemented; and

5.8 Liaise with foreign governments and international organisations or bodies on matters relating to money laundering, including terrorism.

- **Which are the institutions in Malaysia responsible for providing early warning to other States?**

1. There are various enforcement institutions which communicate with their respective counter-parts in other States.

- **Sub-paragraph 2 (c):**

  - **Please provide examples of relevant action taken, if any.**

1. Due to the national security and confidentiality, the relevant information cannot be disclosed.

- **Sub-paragraphs 2 (d) and (e):**

  - **Apart from sections 120A, 125 and 126 of the Penal Code, are there any existing or proposed legal provisions dealing with terrorism, both within and outside Malaysia?**

1. The relevant existing legislative provisions have been listed in the report to the CTC. These are –

1.1 Section 108A of the Penal Code;

1.2 the Internal Security Act 1960;

1.3 the Societies Act 1966;

1.4 the Emergency (Public Order and Prevention of Crime) Ordinance 1969;

1.5 the Prevention of Crime Act 1959;

1.6 Public Order (Preservation) Act 1958;

1.7 Kidnapping Act 1961;

1.8 Extraterritorial Offences Act 1976;

1.9 Extradition Act 1992; and

1.10 Mutual Assistance in Criminal Matters Act 2002.

2. Further, Malaysia is proposing to enact specific legislative provisions to criminalize and prohibit the collection and provision of funds and other financial assets or economic resources etc. This matter is being undertaken by the Ministry of Home Affairs.

- **Is Malaysia able to claim jurisdiction over all offences listed in sub-paragraph 2 (d) of the Resolution and bring the perpetrators of such offences to justice, if they are citizens or permanent residents of Malaysia? Please outline the legal provisions which are relevant in that context.**

1. Yes, Malaysia is able to claim jurisdiction over all offences listed in subparagraph 2(d) of the Resolution and bring the perpetrators of such offences to justice, if they are citizens of or permanent residents in Malaysia.

2. The relevant legal provisions are as follows:

2.1 **Penal Code**

2.1.1 S2 provides that every person shall be liable to punishment under the Penal Code for every act or omission contrary to the provisions of the Penal Code, of which he shall be guilty within Malaysia

2.1.2 S3 provides that any person liable by law to be tried for an offence committed beyond the limits of Malaysia shall be dealt with according to the provisions of the Penal Code for any act committed beyond Malaysia in the same manner as if such act had been committed within Malaysia.

2.1.3 Section 4 provides that the provisions of Chapter VI of the Penal Code (Offences against the State - s121-130A) shall apply to any offence committed –

2.1.4 by any citizen or any permanent resident on the high seas on board any ship or on any aircraft whether or not such ship or aircraft is registered in Malaysia;

2.1.5 by any citizen or any permanent resident in any place without and beyond the limits of Malaysia, as if the offence had been committed in Malaysia.

2.2 **Courts of Judicature Act 1964**

2.2.1 S22 provides that the High Court has jurisdiction to try-

- all offences committed –
  - within its local jurisdiction;
  - on the high seas on board any snip or on any aircraft registered in Malaysia;

- by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

- by any person on the high seas where the offence is piracy by the law of nations; and

- offences under Chapter VI of the Penal Code and under any of the written laws specified in the Schedule to the Extra-Territorial Offences Act 1976, or offences under any other written law the commission of which is certified by the Attorney General to affect the security of Malaysia committed, as the case may be –

  - on the high seas on board any ship or on any aircraft registered in Malaysia;

  - by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

  - by any citizen or any permanent resident in any place without and beyond the limits of Malaysia.

2.3 **Aviation Offences Act 1984**

2.3.1 Section 4 provides that for the purposes of the application of the Extradition Act 1992 to crimes committed on board an aircraft in flight, any aircraft registered in a Convention country shall, at any time while that aircraft is in flight, be deemed to be within the jurisdiction of that Convention country whether or not it is for the time being also within the jurisdiction of any other country.

2.3.2 Section 2(1) defines "Convention country" to mean a country which has ratified or acceded to the Convention on Offences and Certain other Acts Committed on Board Aircraft (the Tokyo Convention).

- **Why is the Prevention of Crime Act 1959 only applicable to Peninsular Malaysia?**

1. Malaysia has several laws that apply in this matter. Although the Prevention of Crime Act 1959 only applies in West Malaysia, the Emergency (Public Order and Prevention of Crime) Ordinance No. 5 of 1969 applies throughout Malaysia.

- **How is the term "*secret society*" defined in the Prevention of Crime Act 1959 or by the Malaysian authorities and is this definition relevant for the implementation for sub-paragraph 2 (e) of the Resolution?**

1. The term "secret society" refers to registrable categories under the Act as provided in the First Schedule Part 1.

2. The definition includes members who participate in Triad ritual or societies that maintain secrecy as to their objects or constituted or used for the purposes involving the commission of offences that are seizable under the law.

3. This definition is relevant for the implementation for sub-paragraph 2(e) of the Resolution.

- **Please explain the term "*extra-territorial jurisdiction*" as used in the context of the Extra-territorial Offences Act 1976 and how this jurisdiction is applied by the Malaysian authorities in law as well as in practice in order to implement sub-paragraph 2 (e) of the Resolution.**

1. The term "extra-territorial jurisdiction" as used in the context of the Extra-territorial Offences Act 1976 means that Malaysian authorities claim jurisdiction over certain specified offences under Malaysian law as if these offences were committed in Malaysia when such offences are committed -

1.1 on the high seas on board any ship or on any aircraft registered in Malaysia.

1.2 by any citizen or permanent resident on the high seas on board any ship or on any aircraft

1.3 by any citizen or permanent resident in any place without and beyond the limits of Malaysia.

2. These offences are specified in section 2 of the Extra-territorial Offences Act 1976 as follows:

2.1 any act contrary to the provisions of the Official Secrets Act 1972 and the Sedition Act 1948

2.2 any offence under any other written law the commission of which is certified by the Attorney General to affect the security of Malaysia.

3. Subparagraph 2(e) of the Resolution requires States to ensure that-

3.1 any person who participates in the financing, planning, preparation or perpetration of terrorist acts or participates in supporting terrorist acts is brought to justice

3.2 in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.

4. Therefore, if the person who participates in the financing, planning, preparation or perpetration of terrorist acts or participates in supporting terrorist acts is a citizen or permanent resident of Malaysia or if the terrorist acts specified are committed on a Malaysian registered vessel or aircraft, Malaysia would claim jurisdiction over the offence as if the offence had been committed within Malaysia and, where the evidence is sufficient, duly prosecute such person in accordance with the law.

5. Malaysia has not had to invoke the Extra-territorial Jurisdiction Act 1976 to date as those suspected of compromising the security of Malaysia have committed their acts within Malaysia.

- **Which written laws and which aspects of the rule of law prevent the Public Prosecutor from authorizing an investigation or from requiring statements in accordance with sections 48 and 49 of the proposed Anti-Money Laundering Act 2001 (page 64 of the report)?**

1. The opening line for section 48 reads, "Notwithstanding the provisions of any other written law or any rule of law,..." while the opening line of section 49 reads "Notwithstanding any law or rule of law to the contrary,..." show that both provisions have overriding effect over any other written law or rule of law. Hence, the powers of the Public Prosecutor to authorise investigations under sections 48 and 49 cannot be prevented by any other written law.

- **Sub-paragraph 2 (f):**

- **Please describe how the requirement of reciprocity (pages 17 and 52 of the report) is or will be applied in practice in relation to judicial assistance in criminal matters and extradition, if the only evidence available is meager or contradictory.**

1. The designated central authority will decide whether to give effect to an extradition request or a request for mutual assistance in a criminal matter based on the information disclosed in the request and the undertaking that reciprocal treatment will be accorded to Malaysia for a similar request.

2. A certain level of detail and specificity would be required in the request to enable the competent authority in the requested State to give effect to the request, be it to take evidence for criminal proceedings, to obtain a production order for documents and other materials, to arrange for the attendance of a person in the requesting State to give evidence or assistance in a criminal matter, to enforce a foreign forfeiture order or to restrain dealings in property, to carry out search and seizure, to locate or identify and locate a person or to assist in the service of process.

3. The general rule is that assistance and cooperation will be given to the extent possible unless the request is intended merely as a "fishing expedition" or to do so would prejudice national interests.

- **Section 10 of the proposed Anti-Money Laundering Act 2001 empowers the Central Bank of Malaysia to communicate information to a corresponding authority if there exists a reciprocal arrangement between Malaysia and the State of that authority (page 44 of the report). Please list the countries with which such arrangements exist.**

1. At the moment Malaysia has not entered into any arrangements with any countries for the exchange of information. However, work is currently under progress to sign a Memorandum of Understanding with the Australian Transaction Reports and Analysis Centre (AUSTRAC) concerning cooperation in the exchange of financial intelligence.

- **Will it be possible to waive the requirement in section 10 of the proposed Anti-Money Laundering Act 2001, under which the corresponding authority must undertake, in particular, not to use the information as evidence in any proceedings?**

1. Section 10 may be waived by section 80 of the AMLA which provides for the Minister of Finance, upon the recommendation of the competent authority, to exempt a person or class of persons from all or any of the provisions of Part III, including section 10, if he considers it consistent with the purposes of the AMLA or in the interest of the public.

- **What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or support of terrorist acts) must be met? How long does it actually take in practice to implement such a request?**

1. There is no "legal timeframe" within which a request for judicial assistance in criminal investigations or criminal proceedings must be met. The requesting State is required to

specify its requirements in this regard, especially in cases of urgency, in the request to Malaysia.

2. Where a timeframe is specified, Malaysia will use its best endeavours to meet that timeframe. In all other cases, the matter will be dealt with as expeditiously as may be possible depending on the complexities of the matter.

3. Malaysia's Mutual Assistance in Criminal Matters Act 2002 has not come into operation yet and thus we are unable to categorically state how long it would actually take in practice to implement such a request. Malaysia also has not provided any mutual assistance under Part VII of the Dangerous Drugs (Forfeiture of Property) Act 1988.

- **Please provide any available details on how this sub-paragraph has been implemented in practice.**

1. The Royal Malaysia Police and the Financial Intelligence Unit of the Central Bank of Malaysia have been providing the necessary assistance to and cooperating with foreign law enforcement agencies upon request in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceeding, in accordance with domestic law.

2. The exact details of the assistance and cooperation are confidential.

- **Sub-paragraph 2 (g):**

  - **What action has been taken, or is proposed, by Malaysia to implement controls at its ports in order to prevent the movement of persons involved, or alleged to be involved, in terrorist acts?**

1. The Royal Customs and Excise Department under the purview of the Ministry of Finance place its personnel at all the ports in Malaysia. The Department is responsible for the security checks on all transshipment into Malaysia via the ports. This may help to detect illegal entry or exit of alleged terrorists.

2. The Marine police from the Royal Malaysia Police are stationed strategically at the ports enabling enforcement operations to be carried out where needed. The Royal Malaysia Navy and Air Force provide sea and air surveillance.

3. Immigration personnel are also present at the ports to facilitate entry/exit arrangements that would ensure those who are sought by the enforcement authorities do not leave the country.

- **Could Malaysia please outline the 1984 Agreement on Security Arrangements at the Border Areas between the Government of Malaysia and the Government of the Republic of Indonesia (MALINDO) –(page 70 of the report)?**

1. The 1984 Agreement on Security Arrangement at the Border Areas between the Government of Malaysia and the Government of the Republic of Indonesia (MALINDO) deals with the communist insurgency and illegal logging.

2. The Agreement is currently being reviewed to take into account, among others, transnational crime which includes terrorism and other related criminal matters in the border areas such as arms and drug trafficking, piracy and disaster assistance (search and rescue).

- **Have any specific measures been taken under the Immigration Act 1959/63, in accordance with section 8 or 9 for example, in order to implement sub-paragraph 2 (g) of the Resolution?**

1. The Malaysian Immigration Department placed its officers at all entry and exit points in Malaysia. Entry is refused to those who have been blacklisted due to past offences committed while in Malaysia, illegal immigrants and those whose name have been given by the United Nations as posing security threats.

- **Please explain how the procedures for the issuance of identity papers and travel documents prevent the counterfeiting, forgery or fraudulent use of those documents and what measures exist to prevent their forgery etc.**

1. An identity card is issued to a national of Malaysia. Upon reaching the age of 12, a citizen of Malaysia would be issued with an identity card upon application to the National Registration Department. For permanent residents, they would also be issued identity cards that are differentiated by colour from those of citizens. However, application for permanent resident status in Malaysia is stringent. A person would have to stay and work in Malaysia for a period of at least 5 years and fulfill other conditions before being allowed to apply.

2. Passports are issued to citizens of Malaysia.

3. To prevent forgery, Malaysia has incorporated the use of 'smart chip' in the issuance of new identity cards known as MyCard and also the introduction of the 'smart' passports. The 'smart chip' embodies personal information of the bearer of such identity card or passport that can only be read by specialized readers.

- **Sub-paragraphs 3 (a) and (b):**

- **Please describe the administrative measures that have been taken in order to implement these sub-paragraphs of the Resolution.**

1. The Royal Malaysia Police has extensive networking with its counterpart either through the Interpol Division or the respective Divisions such as Narcotics and Serious Crime Division. Exchanges of information such as the whereabouts of suspected criminals and other information is facilitated through the networking.

2. Joint investigation is also carried out where the alleged offence is carried out in more than one jurisdiction.

3. The Malaysian Immigration Department has also introduced new conditions and procedures for entry into Malaysia. Entry into Malaysia for certain countries is only

allowed with reference and payment of a security bond. The social visit pass is not allowed to be extended from the initial period given.

4. The Malaysian Smart Passport has also been introduced with integrated security features to prevent forgery and falsification of passports.

- **Which are the authorities responsible in Malaysia for exchanging information and co-operating internationally in accordance with the requirements of these sub-paragraphs.**

1. The Ministry of Home Affairs, National Security Division, Prime Minister's Department, Royal Malaysia Police and the Malaysian Immigration Department.

- **Sub-paragraph 3 (c):**

- **Please provide the CTC with a progress report on the proposed Agreement on Exchange of Information and Establishment of Communication Procedures between Malaysia, Indonesia and the Philippines.**

1. The Agreement on Exchange of Information and Establishment of Communication Procedures between Malaysia, Indonesia and the Philippines was signed on 7 May 2002.

2. It will come into force once all the Parties have complied with their domestic requirements for its entry into force.

3. On 30 July 2002, Cambodia executed a Protocol to accede to the Agreement on Exchange of Information and Establishment of Communication Procedures as provided for under the Agreement while on 5 November 2002, Thailand executed a similar Protocol to accede to the Agreement.

- **Has Malaysia entered into bilateral agreements to prevent and suppress terrorist attacks and take action against perpetrators of such acts? With which countries has Malaysia entered into bilateral treaties on extradition and mutual legal assistance?**

1. Yes, Malaysia has entered into bilateral agreements to prevent and suppress terrorist attacks and take action against perpetrators of such acts. These are-

   1.1 the Declaration of Cooperation between the Government of Malaysia and the Government of the United States of America on Cooperation to Combat International Terrorism signed on 14 May 2002.

   1.2 the United States of America-ASEAN Joint Declaration for Cooperation to Combat International Terrorism signed on 1 August 2002.

   1.3 the Memorandum of Understanding between the Government of Malaysia and the Government of Australia on Cooperation to Combat International Terrorism signed on 2 August 2002.

2. In addition, Malaysia has entered into bilateral security agreements with several countries. These include the Joint Border Security Agreements with Thailand, Indonesia and the Philippines.

3. Malaysia has extradition treaties with the Republic of Indonesia (1992), the Kingdom of Thailand (1992), the United States of America (1997) and Hong Kong, China (2000).

4. Part V of the Extradition Act 1992 makes special provision for the return of fugitive criminals to Brunei Darussalam and the Republic of Singapore.

5. Section 16 of the Aviation Offences Act 1984 provides that where there is no arrangement relating to extradition in force between Malaysia and a State which is a party to the Convention for the Suppression of Unlawful Seizure of Aircraft or the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, as the case may be, the Conventions may be regarded to have effect as if they were arrangements relating to extradition for the purposes of the Extradition Act 1992.

6. Malaysia's Mutual Assistance in Criminal Matters Act 2002 has not come into operation yet. However, it is anticipated that mutual legal assistance treaties will be entered into once the Act comes into operation.

7. No bilateral treaties have been made under Part VII of the Dangerous Drugs (Forfeiture of Property) Act 1988.

- **Sub-paragraph 3 (d):**

  - **The CTC would welcome a progress report, in relation to the twelve relevant international conventions and protocols relating to terrorism, on:**

    - **the steps taken in order to become a party to the instruments to which Malaysia is not yet a party; and**

    - **progress made in enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.**

1. In relation to the first bullet, Malaysia has established an Inter-Agency Committee on International Terrorism to study the remaining instruments to which Malaysia is not yet a party with a view to making appropriate recommendations to the government whether Malaysia is able to accede to the instrument and to recommend the legislative and other action that may be required, if any, to implement those instruments.

2. In relation to the second bullet, Malaysia has enacted the Aviation Offences Act 1984 to implement the following Conventions:

   2.1 the Convention on Offences and Certain Other Acts Committed on Board Aircraft which Malaysia ratified on 5 March 1985;

   2.2 the Convention for the Suppression of Unlawful Seizure of Aircraft which Malaysia ratified on 4 May 1985; and

2.3 the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation which Malaysia ratified on 4 May 1985.

3. Malaysia is taking action to amend the Aviation Offences Act 1984 to enable it to ratify the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation which it signed on 24 February 1988.

- **Sub-paragraph 3 (e):**

  - **Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Malaysia is a party?**

1. The Extradition Act 1992 provides that extraditable offences as offences punishable with a term of imprisonment of more than one year or by death. The extradition treaty between Malaysia and USA follows this provision. It provides that extraditable offences are offences punishable with imprisonment by more than one year or with heavier punishment. The extradition treaties between Malaysia and Thailand, Indonesia and Hong Kong list the specific extraditable offences.

2. As for Hong Kong, extraditable offences includes murder, manslaughter, inflicting grievous bodily harm, offence against the law of dangerous drugs, possession or laundering proceeds obtained from the commission of any offence for which surrender may be granted, criminal damage, offences relating to firearms and ammunition and explosives, unlawful seizure of aircraft, smuggling and piracy.

- **Sub-paragraph 3 (f):**

  - **Please elaborate on the legal provisions governing entry into Malaysian territory to the extent they are relevant for the implementation of this sub-paragraph and have not been outlined in sub-paragraph 2 (c) of the report (pages 49 to 52).**

    Please refer to Sub-paragraph 2(c) of the Malaysian report.

    1. Persons who are within the prohibited class of immigrants under the Immigration Act 1959/63 may be denied entry at Malaysia's orders/entry points by the Director General.

    2. This class includes any person who believes in or advocates the overthrow by force or violence of any Government in Malaysia or of any established government or of constituted law or authority or who disbelieves in or is opposed to established government, or who advocates the assassination of public officials, or who advocates or teaches the unlawful destruction of property.

    3. In the case of such persons who have entered the country legally, the Government may revoke their visas, where such a requirement is in place. The position of nationals from countries with which Malaysia has made arrangements to remove visa requirements may be more difficult. In such cases, deportation may depend on the commission of an offence under domestic law.

    4. In the case of such persons who have entered the country illegally, the Government may deport them. However, the Government would first have to establish their country of origin before they may be repatriated and this will also require the co-operation of the country of origin.

    5. Such persons may also be extradited upon request subject to satisfaction of the conditions imposed under the Extradition Act 1992 and the relevant extradition treaty.

- **Sub-paragraph 3 (g):**

  - **Sub-paragraph 3 (g) of the Resolution requests States to ensure "*that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists*". In view of section 8 of the Extradition Act 1992, please clarify how Malaysia intends to meet this requirement.**

1. Section 8(a) of the Extradition Act 1992 provides that a fugitive criminal shall not be surrendered to a country seeking his return if the offence in respect of which his return is sought is of a political character or he proves to the satisfaction of the Sessions Court before which he is brought or of the Minister that the warrant for his return has in fact been made with a view to try or punish him for an offence of a political character.

2. However, section 9 of the Extradition Act 1992 provides limitations on the political offence exception as follows:

   "For the purposes of paragraph 8(a), any of the following offences shall not be held to be offences of a political character in relation to a country which has made corresponding provisions in its laws:

   2.1 murder or other wilful crime against the person of a Head of State or a member of the Head of State's immediate family;

   2.2 an act which, under a multilateral treaty to which Malaysia and the country seeking the return of the fugitive criminal are parties, constitutes an offence for which a person will be extradited or prosecuted notwithstanding the political character or motivation of such act;

   2.3 any attempt, abetment or conspiracy to commit any of the foregoing offences."

3. For the purposes of section 9(b) of the Extradition Act 1992, it is noted that the 12 UN Terrorism Conventions and Protocols expressly provide that the offences criminalized under those instruments constitute offences for which a person will be extradited or prosecuted notwithstanding the political character or motivation of such acts.

4. Malaysia is already a party to 3 of those Conventions and the relevant Ministries and agencies are studying the remaining Conventions with a view to making appropriate recommendations to the Government.

- **Paragraph 4:**

  - **Has Malaysia addressed any of the concerns expressed in paragraph 4 of the Resolution?**

    1. Special Session of the OIC Foreign Ministers on Terrorism, held in Kuala Lumpur from 1 - 3 April 2002, adopted the Kuala Lumpur Declaration on International Terrorism. The Declaration reflects the principled position of the OIC member countries and also outlined a Plan of Action that would be undertaken by the OIC member countries.

    2. Malaysia has hosted the 2nd Annual Senior Senior Officials Meeting on Transnational Crime from the 16-17th May 2002. Malaysia also participated in the ASEAN Ministerial Meeting on Transnational Crime held in Singapore in 2001. Malaysia is an active participant in other regional and international conventions and meetings that discuss issues of transnational crime.

- **Other matters:**

  - **Could Malaysia please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.**

    Not available.